



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/148487

PRELIMINARY RECITALS

Pursuant to a petition filed April 04, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Waukesha County Health and Human Services in regard to Child Care, a hearing was held on May 14, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the county agency correctly determined the petitioner's CC benefits effective February 24, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Lynnae Boyenga

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County who resides with her husband and their grandchild.
2. The petitioner receives Kinship Care benefits for her care of the grandchild.

3. The petitioner and her husband are self-employed in the real estate business. Per the petitioner's 2010 federal income tax Schedule C, her net profit (line 29) for 2010 was \$1367. This annual amount averages \$133.92 monthly.
4. Per the couple's other 2011 Schedule C, the husband's net profit for 2011 was \$14,593. This annual amount averages \$1216.08 monthly.
5. On April 1, 2013 the agency issued a notice entitle Child Care Authorization Information stating that petitioner was eligible for 4 hours of CC per week.

DISCUSSION

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); Child Care Policy Manual, (hereafter "the Manual"), §1.1.1, available online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1); see also Manual §1.13.10.

The Manual provides as follows concerning self-employed applicants/recipients at §3.6.1.2:

During the first 6 months that a parent is engaged in a new self-employment business, the agency may authorize care for the hours the parent is engaged in self-employment work....

Authorizations for self-employment are only allowed to the extent that they support employment that produces monthly-adjusted self-employment income equivalent to at least the state minimum wage.

The Department has chosen to limit child care authorizations for self-employed parents to the hours obtained by dividing net self-employment income by the minimum wage. It allows full-time child care for up to six months after the person starts a new self-employment business, no doubt to allow the business time to grow to determine whether it can be capable of bringing in sufficient net income. The reason for the limitation is to avoid subsidizing a business that is not self-supporting. The agency explained that it calculated the hours based on the wife's taxes from her 2010 taxes showing her profit as \$1367 (line 29). Then the agency divided that profit by 12 (months) for a total of \$133.92/month. That monthly figure was then divided by \$7.25 (minimum wage), and then divided by the factor of 4.3 to account for the weekly hours. This resulted in 3.66 hours, or rounding up, 4 hours/week authorized. The agency did not calculate out the husband's income because the calculations for that show him working full-time. In all two-parent households, the number of hours authorized for child care only cover the overlapping hours when both parents are participating in approved activities. See Manual, §§1.4.8.2 and 3.6.18. Because the evidence shows that the county followed Department policy correctly, I affirm the determination.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The county agency correctly determined the petitioner's CC benefits effective February 24, 2013.

THEREFORE, it is

ORDERED

The petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of July, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 9, 2013.

Waukesha County Health and Human Services
Child Care Benefits